Ga. 598. There is a distinction to be noted between insanity as a defense and as going to the free and voluntary character of a confession. It is quite conceivable that the defendant may have been in full possession of his faculties at the time the crime was alleged to have been committed, yet have become insane before making the confession. Had the defendant in the principal case been proved to have been insane at the time the confession was made the question would then have arisen whether the insanity went to the free and voluntary character of the confession so as to render it inadmissible. No case on this bare point appears to have been decided, but it would seem best to dispose of it by analogy to a case of intoxication, treating the extent of the insanity and its effect upon the mind as questions to be submitted to the jury along with the confession, to be considered by them in determining its weight. See note to *Lindsay* v. *State, supra.*

EVIDENCE—NOT ERROR FOR PROSECUTOR TO WITHDRAW WITNESS AND PRIVATELY REFRESH HIS RECOLLECTION.—In a criminal prosecution a witness who had testified before the grand jury manifested a hazy recollection. The prosecutor was permitted to withdraw the witness and refresh her memory as to her previous testimony. No actual prejudice appearing, it was *held* not to be error. *State* v. *Henson* (Mo., 1921), 234 S. W. 832.

It is well settled that previous testimony may be used to refresh a witness's recollection. *State* v. *Martin,* 94 N. J. L. 139; 1 WIGMORE ON EVIDENCE, § 737. The prior testimony, however, should not be read in the presence of the jury. *State* v. *Walters,* 145 La. 209; *Kirkland* v. *State,* 86 Tex. Cr. R. 595; *State* v. *DePriest* (Mo.), 232 S. W. 83. The regular method of refreshing the witness's memory in this way, as is stated in the principal case, is to withdraw the jury. With the privileges which the law gives by way of various methods of stimulating the recollection of a witness while on the witness stand, there would seem to be no reason except a sinister one for withdrawing a witness to refresh recollection. The method adopted in the instant case lends itself too conveniently to the coaching of an unscrupulous witness by an unscrupulous attorney not to be viewed with suspicion. It would not be surprising to find an appellate court presuming prejudice and directing a new trial.

EVIDENCE—OPINION BY AN EXPERT WITNESS ON "THE VERY ISSUE" INADMISSIBLE.—In a dentistry malpractice case the testimony of a family physician, who saw the operation complained of, that it was unskillful, was admitted. *Held,* reversible error as invading the jury's province. *Patterson* v. *Howe* (Ore., 1922), 202 Pac. 225.

While a general rule excluding opinion evidence may have been desirable, it was inevitable that there should result a relaxation necessitated by the practical conditions under which trials are had. It frequently happens in practice that the facts which surround a question are so complicated or so technical that the jury may not be able to grasp them or draw the proper inference. The principle, then, upon which opinion evidence by experts became admissible was assistance to the jury. The limit upon this admissi-

bility, according to one view, was whether or not the opinion was expressed upon the exact question which the jury was required to decide. If it was, the evidence was inadmissible. *Yost* v. *Conroy,* 92 Ind. 464. The principal case affirms this rule and there is authority for the decision in *Lehman* v. *Knott* (Ore., 1921), 196 Pac. 476, and in *Pointer* v. *Klamath Falls Land Co.,* 59 Ore. 438, Ann. Cas. 1913C, 1076. The reason of the rule is that such opinions usurp the functions of the jury. The court observed that if the jury believed the testimony of the witness and had confidence in his judgment then nothing remained for it to do except to determine what the amount of the damages should be. Where the only practicable method of making proof of the fact in issue is by means of opinion evidence, it is doubtful whether the Oregon court would adhere to the doctrine of the principal case. See *Lehman* v. *Knott, supra.* Many cases have held that opinion evidence may be given upon the very issue. *American Agricultural Chemical Society* v. *Hogan,* 213 Fed. 416; *Cook* v. *Doud Sons & Co.,* 147 Wis. 271; *Poole* v. *Dean,* 152 Mass. 589; *Taylor* v. *Kidd,* 72 Wash. 18. See also 20 MICH. L. REV. 360.

INNKEEPERS—LIABILITY TO ONE WHO RESORTS TO INN FOR UNLAWFUL PURPOSE.—Plaintiff on invitation of a guest was going to the latter's room at defendant's inn to play cards for money. The elevator was in a dark place and the door to the shaft was open while the carriage was on another floor. For injuries received from stepping through the door and falling nine or ten feet down the shaft plaintiff sued defendant innkeeper. *Held,* that one entering an inn for an unlawful purpose is not an invitee, but a mere trespasser to whom the innkeeper owes no duty except not to wilfully or wantonly injure him. *Jones* v. *Bland* (N. C., 1921), 108 S. E. 344.

It has been held that an innkeeper is not liable as such for money deposited with the night clerk by one who took a room at the inn for the night for an unlawful purpose. *Curtis* v. *Murphy,* 63 Wis. 4. The instant case extends this rule to one invited to the inn by a guest, not as to the loss of money or property, as to which defendant would of course not be an innkeeper even if the purpose of the visit were lawful, but as to the care owed such an invitee for his personal safety, as to which the innkeeper's liability does not differ from that to a guest. It would seem that a guest, or his invitee, becomes a trespasser when he enters the inn for any unlawful purpose. The recent case of *Newcomb Hotel Co.* v. *Corbett* (Ga. App., 1921), 108 S. E. 309, puts a proper limit on the innkeeper in holding that he acts at his peril in entering a room occupied by one registered as a guest in order to determine whether the occupant is there for a lawful purpose.

INSURANCE—DEATH BY SUNSTROKE IS ACCIDENTAL.—Plaintiff sued as beneficiary under a policy of insurance issued by defendant company to the plaintiff's deceased husband, insuring him against "loss resulting from bodily injuries effected directly, exclusively and independently of all other causes, through accidental means." The insured was overcome by sunstroke while